

**IN THE UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA**

In re:

Ashley II of Charleston, LLC,  
  
Debtor.

Case No. 16-00560-dd  
Chapter 11

**NOTICE OF WITHDRAWAL OF PROOF OF CLAIM NUMBER 10**

As attorney for PCS Nitrogen, Inc. ("PCS"), a creditor of the above-captioned debtor, I do hereby withdraw PCS's Proof of Claim Number 10 filed on June 23, 2016, pursuant to the attached Stipulation of Voluntary Dismissal of Claims against Ashley II of Charleston, LLC.

DATE: December 4, 2019

/s/ Stanley H. McGuffin  
Stanley H. McGuffin  
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**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION**

PCS NITROGEN, INC.

Plaintiff,

v.

ROSS DEVELOPMENT  
CORPORATION, ASHLEY II OF  
CHARLESTON, LLC, ALLWASTE TANK  
CLEANING n/k/a QUALASERVICES,  
LLC, AND ROBIN HOOD CONTAINER  
EXPRESS n/k/a SOUTHEASTERN  
CONTAINER EXPRESS, LLC,

Defendants.

Civ. No. 2:14-cv-4252-MBS

J. HENRY FAIR, JR;  
J. HOLCOMBE ENTERPRISES, LP;  
and CHARLES LANE and  
EDWIN COOPER, III, as Personal  
Representatives of the Estate of  
JAMES H. HOLCOMBE,  
Plaintiffs,

v.

ROSS DEVELOPMENT CORPORATION  
CORPORATION, ASHLEY II OF  
CHARLESTON, LLC, ALLWASTE TANK  
CLEANING n/k/a QUALASERVICES,  
LLC, and ROBIN HOOD CONTAINER  
EXPRESS n/k/a SOUTHEASTERN  
CONTAINER EXPRESS, LLC,  
Defendants.

Civ. No.: 2:15-cv-3688-MBS

**STIPULATION OF VOLUNTARY DISMISSAL OF CLAIMS AGAINST  
ASHLEY II OF CHARLESTON, LLC**

Pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 41(a)(1)(A)(ii), PCS Nitrogen, Inc. ("PCS") and J. Henry Fair Jr.; J. Holcombe

Enterprises, LP; and Charles Lane and Edwin Cooper, III, as Personal Representatives of the Estate of James H. Holcombe (“Holcombe and Fair”) file this Stipulation of Voluntary Dismissal of Claims Against Ashley II of Charleston, LLC (“Ashley II”). The parties stipulate as follows:

1. On or about December 12, 2013, the United States Environmental Protection Agency (“EPA”) issued a unilateral administrative order to PCS, Holcombe and Fair, and Ashley II directing them to implement EPA’s response action plan at the Site.

2. PCS and Holcombe and Fair incurred response costs complying with EPA’s order and filed suits against entities determined liable for a share of costs in the Ashley litigation, including Ashley II, to recover contributions to response costs under Section 113 of the Comprehensive Environmental Response Compensation and Liability Act.

3. Ashley II was determined liable for a five percent (5%) share of response costs incurred at the Site in the decision issued in *Ashley II of Charleston, LLC v. PCS Nitrogen, Inc.*, 791 F. Supp. 2d 431, 480 (D.S.C. 2011), *aff’d* 714 F.3d 161 (4th Cir. 2013) (hereinafter “Ashley litigation”) on May 27, 2011.

4. Ashley II filed a Chapter 11 bankruptcy petition on February 8, 2016 in the United States Bankruptcy Court for the District of South Carolina, *In re Ashley II of Charleston, LLC*, Case No. 16-00560-dd (Bankr. D.S.C.) (the “Ashley Bankruptcy Proceeding”).

5. PCS filed the following proofs of claim against Ashley II in the Ashley Bankruptcy Proceeding:

Claim #	Basis	Claim Amount	Priority
5	EPA Past Response Costs	\$190,000.00	Unsecured
6	PRP Past Remediation	\$402,448.24	Unsecured
7	EPA Future Response Costs	Unliquidated	Admin
9	Future Cap Repair	Unliquidated	Admin
10	2016 Cap Repair	\$32,772.32	Admin
11	Donut Hole Money	\$337,324.00	Secured
12	Orphan Share	\$508,768.21	Unsecured
13	Future PRP Response Costs	Unliquidated	Admin

6. Holcombe & Fair filed the following proofs of claim against Ashley II in the Ashley Bankruptcy Proceeding:

Claim #	Basis	Claim Amount	Priority
14	EPA Past Response Costs	\$190,000.00	Unsecured
15	PRP Past Remediation	\$191,761.92	Unsecured
16	EPA Future Response Costs	Unliquidated	Admin
17	Future Cap Repair	Unliquidated	Admin
18	Donut Hole Money	\$337,324.00	Secured
19	Orphan Share	\$331,504.94	Unsecured
20	Future PRP Response Costs	Unliquidated	Admin
21	Contract Indemnity	Unliquidated	Admin

7. Ashley II's Plan of Reorganization was filed with the Bankruptcy Court on August 9, 2016, as amended by an Addendum filed on September 20, 2016, a Second Addendum filed on October 25, 2016, and a Third Addendum filed on December 13, 2016. The order confirming Ashley II's Plan was entered on December 13, 2016 (the "Confirmed Plan"). The Confirmed Plan became effective on December 29, 2016.

8. Under the Confirmed Plan, PCS and Holcombe and Fair retained all defenses and claims as to distribution from the Ashley Bankruptcy Proceeding in the above-captioned litigation. In accordance with the Order Confirming Plan issued in the Ashley Bankruptcy Proceeding on December 12, 2016 and the Order issued by this Court on January 18, 2017, the automatic stay in the above-captioned litigation was lifted.

9. Pursuant to the Confirmed Plan, Ashley II distributed \$233,000.00 to the United States Environmental Protection Agency ("EPA") at the direction of PCS.

10. Additionally, pursuant to the Confirmed Plan, Ashley II distributed an additional \$233,000.00 to the EPA at the direction of Holcombe and Fair.<sup>1</sup>

11. In accordance with the Confirmed Plan, the equity interest in Ashley II was transferred to the Ashley Liquidating Trust and R. William Metzger, Jr. was appointed as both Trustee of the Ashley Liquidating Trust and Plan Administrator of the Confirmed Plan.

12. In accordance with the Confirmed Plan, Ashley II has liquidated its assets<sup>2</sup> and the Bankruptcy Court issued a Final Decree closing the Ashley Bankruptcy Proceeding on July 23, 2018.

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<sup>1</sup> Ashley II distributed \$135,000.00 to the EPA at the direction of Allwaste Tank Cleaning.

<sup>2</sup> Provided, however, as part of the Confirmed Plan, the Liquidated Trust retains ownership of the property owned by Ashley I, LLC and/or Ashley II known as the Beazer/Koppers Tract and the CPW Tract



13. In the Ashley Bankruptcy Proceeding, Ashley II has directly paid the EPA \$2,701,692.18 in satisfaction of its claims in the Chapter 11 proceeding. This amount is in addition to the contributions at the direction of PCS and Holcombe and Fair. Based on these payments, the EPA withdrew its claims against Ashley II.

14. PCS and Holcombe and Fair are now Ashley II's only remaining general unsecured creditors.

15. On September 10, 2018, the EPA, Holcombe & Fair, and PCS entered into an Administrative Settlement Agreement and Order on Consent ("AOC").

16. As a result of the foregoing, PCS, Holcombe and Fair, and Ashley II have reached an agreement regarding the claims against Ashley II in the above-captioned matters.

17. PCS has agreed to withdraw Claim Numbers 5, 7, 9, 10, 11, 12, and 13 in the Ashley Bankruptcy Proceedings as either moot, paid or resolved by the foregoing within ten (10) days following this Stipulation of Dismissal.

18. Holcombe and Fair has agreed to withdraw Claim Numbers 14, 16, 17, 18, 19, 20, and 21 in the Ashley Bankruptcy Proceedings as either moot, paid, or resolved by the foregoing within ten (10) days following this Stipulation of Dismissal.

19. Ashley II has agreed to allow PCS Claim Number 6 in the full amount of \$402,448.24 and Holcombe and Fair's Claim Number 15 in the full amount of \$191,761.92.

20. Upon completion of the remaining tasks of the Ashley Liquidating Trust and as part of its dissolution, Ashley II will make pro rata distributions to PCS and Holcombe and Fair on their remaining allowed claims as described in the Confirmed Plan and as set forth herein. After such payment, PCS and Holcombe and Fair's claims against Ashley II in the above-captioned cases shall be fully satisfied, released, and discharged.

WHEREFORE, Pursuant to the above-outlined agreement between the parties:

A. PCS and Holcombe and Fair hereby stipulate to the dismissal, with prejudice, of all causes of action in the above-captioned litigation against Ashley II;

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(collectively, the "Remaining Property"), with the executed deeds for the Remaining Property held in escrow to transfer to the Buyer upon the completion of certain conditions listed in an Amended Asset Purchase Agreement and approved by the Bankruptcy Court.

B. Ashley II shall allow PCS Claim Number 6 and Holcombe and Fair Claim Number 15 in the Ashley Bankruptcy Proceeding, and the Ashley Liquidating Trust shall make pro rata distributions on such claims as described above; and

C. PCS and Holcombe and Fair shall immediately withdraw all remaining claims against Ashley II in the Ashley Bankruptcy Proceeding.

D. Provided further for the avoidance of doubt, nothing in this paragraph releases the Ashley Liquidating Trust from its obligations under the Confirmed Plan, including without limitation, its distribution obligations on the claims of PCS and Holcombe and Fair as provided above. The parties shall bear their own respective attorneys' fees, costs, and expenses.

WE SO STIPULATE

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